Saint Paul Planning Commission City Hall Conference Center 15 Kellogg Boulevard West

Minutes April 24, 2009

A meeting of the Planning Commission of the City of Saint Paul was held Friday, April 24, 2009, at 8:30 a.m. in the Conference Center of City Hall.

Commissioners Mmes. Donnelly-Cohen, Faricy, Morton, Porter, Smitten, Thao, Wencl; and

Present: Messrs. Alton, Bellus, Commers, Gordon, Johnson, Kramer, Margulies,

Schertler, Spaulding and Ward.

Commissioners

Absent:

Ms. *Lu and Messrs. *Barrera, *Goodlow, *Nelson.

Also Present: Donna Drummond, Interim Planning Administrator; Peter Warner, City

Attorney's Office; Tom Beach, Department of Safety and Inspections staff; Allan Torstenson, Patricia James, Penelope Simison, Merritt Clapp-Smith, Luis Pereira, Kate Reilly, Ellen Muller, Josh Williams, Emily Goodman and Sonja Butler,

Department of Planning and Economic Development staff.

I. Approval of minutes April 10, 2009.

*Excused

<u>MOTION</u>: Commissioner Donnelly-Cohen approval of the minutes of March 13, 2009. Commissioner Wencl seconded the motion. The motion carried unanimously on a voice vote.

II. Chair's Announcements

Chair Alton announced that a reminder sheet was distributed to the commissioners about the Great River Gathering Dinner on May 14, 2009 and asked commissioners to complete the form if attending.

III. Planning Administrator's Announcements

Donna Drummond reported on planning-related business at the City Council saying that on Wednesday there was final adoption of an ordinance related to the regulation of asphalt cement and asphalt cement manufacturing plants. This was a zoning study that went through the Planning Commission.

IV. PUBLIC HEARING: <u>Grand Avenue Special Sign District</u> – Item from the Neighborhood Planning Committee. (*Emily Goodman.*, 651/266-6551)

Chair Alton announced that the Saint Paul Planning Commission was holding a public hearing on the Grand Avenue Special Sign District. Notice of the public hearing was published in the Legal Ledger on April 2, 2009, and was mailed to the citywide Early Notification System list and other

interested parties.

Emily Goodman, PED staff, gave a presentation on the proposed Grand Avenue Special Sign District Amendments. She presented information on the background of the proposed amendments, general nature of the changes, and described the proposed substantive changes.

Ms. Goodman received one letter from the Summit Hill Association expressing their general support and articulating their specific concerns.

Chair Alton read the rules of procedure for the public hearing.

The following people spoke.

- 1. Mr. David Baker, 2922 Meadow Brook Dr., Woodbury, MN 55125. He is chair of the Business Review Council (BRC) for the City of Saint Paul. They are an advisory group that includes representatives of residents, businesses, and labor. Mr. Baker said that he does not have a lot of comments regarding the Grand Avenue amendments at this time, but will testify at the public hearing on digital signage. The BRC is going to review the proposed Grand Avenue amendments at an upcoming meeting and will submit its recommendations to the City Council.
- 2. Chad Kulas, St. Paul Area Chamber of Commerce, 401 Robert Street, Ste. 150, St. Paul, MN 55101. Mr. Kulas said that the Chamber enjoys the unique charm Grand Avenue has to offer and believes there can be a happy medium of restricting certain types of signs but allowing advertising that fits the look of the neighborhood. Mr. Kulas believes that the current guidelines have enabled the Avenue to be beautiful and does not see a need to change them. He also pointed out that given the economic downturn, it may not be prudent to restrict the ways in which businesses can self-promote. Moreover, because the downturn is impacting the number of enforcement staff at the Department of Safety and Inspections, Mr. Kulas questioned the City's ability to enforce the new ordinance.
- 3. John Wulf, 695 Grand Avenue, St. Paul, MN 55105. He is the general manager for Dixie's and Saji Ya on Grand Avenue, and former president of the Grand Avenue Business Association in 2000. Mr. Wulf said that some of the things (e.g., sandwich boards and portable signs, etc.) that are in this proposal will affect his businesses. He uses a sandwich board to advertise valet parking. He believes this is a safety issue, as it helps to take cars off the street and to attempt to do so by placing staff in the street to flag down potential customers is dangerous. Sandwich boards and portable signs are a way to get the pedestrian traffic into the businesses. Also, Mr. Wulf believes that a dynamic display sign in the window is a clean and affordable alternative to signs that would otherwise clutter the avenue.
- 4. Jeff Roy, Executive Director of the Summit Hill Association. A letter from the Summit Hill Association had been distributed to the commissioners and Mr. Roy referred to that letter. They feel that there needs to be increased restriction on signage size etc., so that Grand Avenue does not become infested with signs, but keeps its charm. He specifically spoke to one point in the letter regarding portable signs, reading: "Unfortunately we note on further review that the portion of the text revising the portable sign section is not in agreement with the original intent of the October 2004 position of the Summit Hill Association and the Grand Avenue Business Association. Our position at that time (and now) on the issue of portable

signs is that if a business is in a building with a facing on Grand Avenue and was up to ½ block north or south of the avenue without a business door opening up to Grand Avenue, then an unlit, portable sign could be placed on the sidewalk right of way, if it did not impede pedestrian traffic. In addition, the Grand Avenue Special Sign Plan should not regulate portable signs on private property; as long as the total square foot restrictions of signage per lot were not exceeded. Our understanding from PED is that under Chap. 64.601 (b), the Grand Avenue Special Sign Plan could be less restrictive than current citywide code on portable signs. With this in mind, we suggest that some mechanism be set up (i.e. a Memo of Understanding or MOU) allowing a business without a door on Grand to enter into an agreement with the City to allow them to have one, due to their special conditions. Further, since we understand that there exists a MOU between the restaurant Moscow on the Hill (located on Selby Avenue) and the City allowing this restaurant and its valet service to have a portable sign on the public right of way; we propose that the text of the Grand Avenue Special Sign Plan include provision for a business on Grand to be able to set up a MOU with the City for valet service parking that would allow a portable sign to be placed on the public sidewalk."

Commissioner Gordon asked if the Summit Hill Association has considered the possibility of portable signs going up on a pole outside the business, rather then sitting on the sidewalk. One of the issues is interference with the public right-of-way if a sign is put on the sidewalk. Rather then sitting on the sidewalk, the signs could be placed on a pole in order to remove them from the sidewalk and increase visibility.

Mr. Wulf's response was that the original understanding they had put into their revision in 2004 was that a sign cannot be placed in more than 1/3 of the sidewalk so that it would not block pedestrian traffic. In terms of effectiveness of Commissioner Gordon's alternative, he has no opinion.

Commissioner Kramer was concerned that the testimony was focusing on whether signs should be allowed in the right-of-way, something that is outside the scope of the ordinance. He also requested staff clarification on whether the ordinance could allow signs in the public right-of-way.

Ms. Goodman read the actual text which says "except for advertising signs for which the restrictions of this chapter shall not be weakened, less restrictive, as well as more restrictive previsions, as specified in this chapter may be permitted if the sign areas and densities for the plan as a whole are in conformity with the intent of this chapter and if such an exception results in an improved relationship between the various parts of the plan." Based on this, it is staff's opinion that there could be language allowing signs to be in the right-of-way along Grand Avenue, if it was the opinion of the approving body that those various conditions were met.

5. David Regan, 867 Grand Avenue, St. Paul, MN 55105. Mr. Regan is the executive director of the Grand Avenue Business Association (GABA). This project has gone on for a long time, and GABA and its executive committee feel like they are prepared to move forward on this. They have taken information from their constituents on this issue and they came back to the portable sign issue, which is illegal across the city. Mr. Regan said that they do want to encourage the massaging of the language around the MOUs for the valet parking. The businesses that are on Grand Avenue and do not have a door on the Avenue, and the current

conditions on the Avenue generally where you see portable signage is where there is a mall situation (such as at Grand and Victoria). Mr. Regan said the unique thing about Grand Avenue is that all of the sidewalks are wide and are connected to a boulevard. All of the signs sit in the boulevard area which makes foot traffic clear so he does not see any signs in the sidewalk.

<u>MOTION</u>: Commissioner Wencl moved to close the public hearing, leave the record open for written testimony until 4:30 p.m. on Monday, April 27, 2009, and to refer the matter back to the Neighborhood Planning Committee for review and recommendation. Commissioner Ward seconded the motion. The motion carried unanimously on a voice vote.

<u>Signs with Dynamic Display Ordinance</u> – Item from the Neighborhood Planning Committee. (*Emily Goodman.*, 651/266-6551)

Chair Alton announced that the Saint Paul Planning Commission is holding a public hearing on the Signs with Dynamic Display Ordinance. Notice of the public hearing was published in the Legal Ledger on April 2, 2009, and was mailed to the citywide Early Notification System list and other interested parties.

Emily Goodman, PED staff, gave a presentation on the proposed Signs with Dynamic Display Ordinance. She presented information on the background and rational for the proposed ordinance and the substantive changes.

Commissioner Schertler said that there are four important issues here. One is the foundation of regulatory authority and the studies that justify regulation. What are those studies as they relate to safety?

Ms. Goodman said that the results of the studies are very closely linked with who funded the study. So if a study was funded by representatives from the sign industry; the studies indicate that there are not issues with safety. But if the study is not from the sign industry, then study results indicate electronic signs are a hazard to safety, it is simply another one of those hazards that drivers experience. If we treat all studies equally, they are a wash. There is a study coming out later this year that's funded by Federal Transportation Administration.

Commissioner Schertler had a question as to fairness. He said the regulations appear to be selecting certain entities to allow for providing information (e.g, Metro Transit, bank time, hockey team, etc.). Has someone from the City Attorney's Office given their legal opinion on this?

Ms. Goodman answered saying the idea of accepting things that are considered to be public services, such as time and temperature and public transit information is a standard practice, but the city attorney has not given their opinion whether that is legally sound or not.

Commissioner Margulies asked what differences exist between this proposed ordinance and ordinances that other cities have adopted, inquiring of staff what might be missing from this one.

Ms. Goodman answered saying that the greatest difference is that many communities choose to ban dynamic display signs outright. Stricter restrictions with regard to length of display, color, scrolling, and speed of transition are also common.

Commissioner Schertler brought up his last two points, expressing concern about the signs at the Xcel Center and also about the cost of regulation.

Ms. Goodman also noted letters that had been received from the Minnesota Sign Association and Daktronics with their comments.

Chair Alton read the rules of procedure for the public hearing.

The following people spoke.

1. Mr. David Baker, 2922 Meadow Brook Dr., Woodbury, MN 55125. He is chair of the Business Review Council for the city of St. Paul. Mr. Baker said the Saint Paul Business Review Council (BRC) voted unanimously to reject the proposed ordinance pertaining to business signs with dynamic displays at the April 1, 2009 full BRC meeting. However, the BRC does like some components of this legislation (e.g., permitting the signs in the B2 zone, relating brightness levels to ambient light, etc.).

Mr. Baker said that dynamic signs are good for business and can deliver public service announcements.

Mr. Baker expressed disagreement about several specific policies in the ordinance: they are not proposed to be allowed in TN districts, the distance between dynamic signs and billboards, and restrictions on schools and churches.

Mr. Baker believes that concern that dynamic display signs are dangerous is unfounded. In addition, when in heavy traffic Mr. Baker does not notice these signs because he keeps his eyes on the road.

We are asking that the Planning Commission forward this matter to the BRC for further discussion and additional fact finding.

Chair Alton said that this matter will be referred to a committee before a decision is made and the committee will study it. He also said that the committee meetings are public and he invited Mr. Baker to come and participate in the discussion.

2. Greg Rendall, president of the Minnesota Sign Association and Bill Amberg, an attorney representing the Minnesota Sign Association. Mr. Amberg said they submitted a letter to all the commissioners stating that they have some specific concerns with the draft ordinance changes. Referring to the letter he read some of the highlights. "The proposed change language concerning Electronic Message Centers (EMCs) causes some concerns for sign makers and local business owners. MSA is concerned that the proposed sign ordinance changes with regard to EMCs will have potentially negative impact on local businesses. The Small Business Administration estimates that businesses can raise their revenue anywhere from 15 to 150 percent with an EMC. Furthermore, EMCs are a good advertising value for small business that often cannot afford other means of advertising that larger businesses can.

Second, as you know, EMCs are intended for a variety of uses. They can be used for identification, similar to a traditional sign, but are typically deployed to provide timely

information to the public regarding goods, services, and promotions. They also provide public service information. Unlike signs utilized for strictly identification purposes (e.g., Target), EMC messages often need multiple frames to be effectively communicated. Regulations placing restrictive message durations (longer than a couple of seconds) accompanied with area restrictions and minimum font sizes prevent the public from seeing a complete message when passing a sign. Such requirements can force EMC owners to span messages out to an impractical duration.

Third, the proposed regulations also seek to limit EMCs to 20 percent of the allowed signage area. EMCs differ from traditionally illuminated signs only in their ability to display multiple messages. Saint Paul's regulations do not limit other illuminated signs.

Mr. Rendall said the biggest issue is only allowing EMCs to be 20% of the total allowed sign area. He believes that in the future strip centers will be built and the entire signage will be electronic message centers for aesthetic reasons. Additionally, Mr. Rendall does not think you can limit content or color to an institution. Mr. Rendall wants the ordinance to be future-thinking.

- 3. Adam Skare with Daktronics, Inc. says they are the world's largest providers of electronic message centers and digital display. He wanted to make two points about one topic and that is the 20% of the overall signage being dynamic. First, they feel that it should be up to the business owner to make the decision as to the percentage for their sign. Second, by restricting overall sign size for the digital portion it could make the sign difficult to read.
- 4. Joel Clemmer 2154 Fairmount Avenue, St.Paul, MN 55105, representing the Macalester Groveland Community Council Land Use Committee.

First, they are very concerned about the appearance of their communities. The technology for display and signage is changing and the ordinances have to change in order to keep up. Mr. Clemmer agrees with the intent of the proposed ordinance.

Secondly, Mr. Clemmer reviewed the studies that have been done by the National Transpiration Safety Council and he said that they are very clear. If attention is lifted from the road for two seconds or longer the probability of crashes increases significantly. Therefore, signs with dynamic display present a safety hazard.

Third, they wish to maintain a fair environment for competition among businesses. However, they do not believe that applying reasonable restrictions to signage that are equally applicable to all businesses is interfering with that competition. Specifically the Macalester Groveland Housing Land Use Committee in its resolution approved of reasonable controls on dynamic display signs and agrees with the intent of the draft ordinance and the proposed amendments from St. Anthony Park Community Council. Mr. Clemmer recommends that there be one dynamic design sign on one zoning lot, rather than having an ordinance that permits multiple signs. Also they do not want to see scrolling or moving displays on an electronic business sign. In conclusion, he said they want to have a look at the ordinances regarding the 660 feet distance between electronic billboards and electronic business signs and to be careful that the ordinances are symmetrical.

5. Jeanne Weigum 1647 Laurel Avenue, St. Paul, MN representing Scenic St. Paul. She said

that they share the concerns of St. Anthony Park and they want to reintegrate the notion that these signs should not be within 660 feet of an electronic billboard and the reverse should also be true so the measurements should go in both directions. Ms. Weigum said as she listened to the presentation, she got the sense that City staff was creating the ordinance based on the MRP sign and the Xcel Center sign, effectively gerrymandering the ordinance to fit these. Ms. Weigum said that we need to create an ordinance that we want and the ordinance we need and grandfather in those two signs if needed. She supports the notion that the color should not be red but amber and that the signs should not swirl, twirl or scroll, because that's a distraction. Lastly, she said that there are electronic signs that mount inside a window and face out, aimed at attracting an audience on the street. This ordinance does not address that. She encourages that this issue of window signs be looked at and either add it to this proposal or ask staff to go back and address that issue.

<u>MOTION</u>: Commissioner Wencl moved to close the public hearing, leave the record open for written testimony until 4:30 p.m. on Monday, April 27, 2009, and to refer the matter back to the Neighborhood Planning Committee for review and recommendation. Commissioner Ward seconded the motion. The motion carried unanimously on a voice vote.

V. Zoning Committee

OLD BUSINESS

#09-041-108 Capitol Car Co. – Enlargement of nonconforming use for a new, larger building for motor vehicle salvage, auto repair, auto body repair, and outdoor auto sales businesses. 388 Como Avenue, SW corner at Western Avenue. (*Josh Williams*, 651/266-6659)

<u>MOTION</u>: Commissioner Morton moved the Zoning Committee's recommendation to approve the enlargement of nonconforming use.

Commissioner Morton stated that she voted to deny the enlargement of nonconforming use at the Zoning Committee meeting. Her concern was that the City is moving forward with a new road that will go through the property. She asked for information about the timeline, if the city has the money to purchase this right away, and what would be the position of the city if this enlargement is approved.

Peter Warner, Assistant City Attorney, said that he had spoken with Mr. Maczko from the City's Public Works Department, and his understanding is that the City Council has not yet approved the final order to do this street improvement project. The City has condemnation authority, but cannot exercise that authority until a final order has been approved by the City Council. The Council may approve this final order on May 6th. There are two parallel aspects to this: the City's legal right to condemn a property and the property owner's legal right to improve his/her property. One does not preclude the other. If the Planning Commission accepts the recommendation of the Zoning Committee, this property owner can exercise his legal right to make improvements to his property. Doing that does not preclude the City from exercising its legal right to condemn the property, but it may cost the City more money.

Commissioner Schertler asked if the approval of this request is discretionary by this board.

Mr. Warner said in the legal context, it is discretionary. But a basic principle of zoning law is that if an applicant meets all the criteria in the Zoning Code, the Commission is bound to issue the approval. This must be factored into that discretion.

Commissioner Gordon agreed that there were two parallel tracks and said that given the fact that the owner meets all the conditions set forth in the Zoning Code, it would be arbitrary to deny the application.

Commissioner Schertler expressed his opinion that there are enough facts to find that this application is not in conformance with the Comprehensive Plan. In this case it is not just a plan vision; they are implementing the plan, negotiating with the property owner.

Commissioner Kramer stated that the issue Commissioner Schertler raised was very important to him as well, but he arrived at a different conclusion. If the City Council had chosen this route, he would have felt more comfortable denying on the basis of the Comprehensive Plan. The problem is that the City has not formally adopted that specific route.

Commissioner Morton said that the purchaser has recently purchased this property and knew that this area was identified as property for acquisition. She thinks this is not consistent with the Comprehensive Plan and they should not be allowing this enlargement. This is a very important route connecting Phalen Blvd. to Pierce Butler Route.

Commissioner Bellus said that the Comprehensive Plan is not a public works decision to do a specific right-of-way improvement; it is a statement of policy about connecting road A to road B in a location. This is a major distinction that needs to be consistent.

More discussion followed.

In response to questions from commissioners, Eriks Ludins, Public Works project manager for the Pierce Butler project said the City has \$5 million in place today for acquisition. In the current CIB proposal cycle, the CIB Committee recommended \$3.1 million for 2010 and \$2.5 million in 2011. The city has already acquired two properties for the project and is proceeding with the project.

At the request of Commissioner Morton, Chair Alton called for a roll call vote on the motion to approve the change of nonconforming use.

<u>ROLL CALL VOTE</u>: The motion to approve the enlargement of nonconforming use carried on a roll call vote of 9-6 (Donnelly-Cohen, Johnson, Morton, Schertler, Spaulding, Thao).

NEW BUSINESS

#09-043-122 St. Thomas- Anderson Athletic Facility – Site plan review for a new athletic building. 2115 Summit Avenue. (*Tom Beach*, 651/266-9086)

<u>MOTION</u>: Commissioner Morton moved the Zoning Committee's recommendation to approve the site plan review subject to additional conditions. The motion carried unanimously on a voice vote.

VI. Comprehensive Planning Committee

<u>Status of old Small Area Plans</u> – Release for public review and set a public hearing on May 22, 2009. (*Merritt Clapp-Smith*, 651/266-6547)

<u>MOTION</u>: On behalf of the Comprehensive Planning Committee, Commissioner Donnelly-Cohen moved to release the draft for public review and set a public hearing on May 22, 2009. The motion carried unanimously on a voice vote.

Chair Donnelly-Cohen announced the next Comprehensive Planning Committee's meeting will be on May 12, 2009.

VII. Neighborhood Planning Committee

<u>District 2 Plan Summary</u> – Release draft for public review and set a public hearing on May 22, 2009. (*Penelope Simison*, 651/266-6554)

<u>MOTION</u>: On behalf of the Neighborhood Planning Committee, Commissioner Wencl moved to release the draft for public review and set a public hearing on May 22, 2009. The motion carried unanimously on a voice vote.

<u>Residential Design Standards Zoning Study</u> – Release design standards ordinance draft for public review and set a public hearing on May 22, 2009. (*Luis Pereira*, 651/266-6591 and Allan Torstenson, 651/266-6579)

<u>MOTION</u>: On behalf of the Neighborhood Planning Committee, Commissioner Wencl moved to release the draft for public review and set a public hearing on May 22, 2009. The motion carried unanimously on a voice vote.

<u>District 9 Plan Summary</u> – Release draft for public review and set a public hearing on June 5, 2009. (*Kate Reilly*, 651/266-6618)

<u>MOTION</u>: On behalf of the Neighborhood Planning Committee, Commissioner Wencl moved to release the draft for public review and set a public hearing on June 5, 2009. The motion carried unanimously on a voice vote.

<u>District 8 Plan Summary</u> – Adopt resolution recommending approval to the City Council. (*Merritt Clapp-Smith*, 651/266-6547)

Ms. Clapp-Smith reported that the Neighborhood Committee worked hard on the changes and they communicated with District 8. District 8 had no objections, and staff was comfortable with the changes.

<u>MOTION</u>: Commissioner Wencl moved on behalf of the Neighborhood Planning Committee to recommend that the City Council adopt the summary of the District 8 Plan. The motion carried unanimously on a voice vote.

Commissioner Wencl announced that the next committee meeting is May 13, 2009.

VIII.	Communications Committee	
	Commissioner Smitten had no report.	
IX.	Task Force Reports	
	No reports.	
Χ.	Old Business	
	None	
XI.	New Business	
	Ms. Drummond announced that Commissioner his wife gave birth this morning to a baby girl	r Barrera could not be at the meeting today because weighing 6 lbs, 13 oz.
XII.	Adjournment	
	Meeting adjourned at 10:40 a.m.	
Recorded and prepared by Sonja Butler, Planning Commission Secretary		
Planning and Economic Development Department, City of Saint Paul		
City of	i Saint I aui	
Respectfully submitted,		Approved(Date)
		(Date)
Donna	Drummond	Marilyn Porter
Interim Planning Administrator		Secretary of the Planning Commission

butler\planning commission\minutes\April 24, 2009